

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

DANIEL NESTA,

Petitioner,

v.

**MARK NOOTH, Superintendent,
Snake River Correctional
Institution,**

Defendant.

MOSMAN, J.,

No. 2:14-cv-00459-PK

OPINION AND ORDER

On June 6, 2016, Magistrate Judge Papak issued his Findings and Recommendation [33], recommending Petitioner Daniel Nesta's Petition for Writ of Habeas Corpus [2] should be DENIED and that the case should be DISMISSED with prejudice. Judge Papak also recommended that I do not issue a certificate of appealability. No objections to the Findings and Recommendation were filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to

make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation and I ADOPT the F&R [33] as my own opinion.

IT IS SO ORDERED.

DATED this 29 day of June, 2016.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Chief United States District Judge